IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1809 OF 2005

Rashtriya Kamgar Sanghatana .... Petitioner

Versus

GWK Ltd. & Ors. ....Respondents

Mr.R. D. Bhatt for the Petitioner.
Mr.C. U. Singh, Senior Advocate with Ms.Geeta Prabhu i/b D. H. Perit & Co. for Respondent No.1.
Mr.P. K. Samdhani i/b M.P. Rege & Co. for Respondent No.2.
Mr.D. H. Mehta with Ms.Deepa Chawan i/b L. D. Shah & Co. for Respondent No.5.

CORAM : DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 1ST SEPTEMBER, 2005.

P.C. :

Respondent No.2 is the Industrial Development Bank of India (hereinafter referred to as IDBI). Respondent No.3 is IFCI Ltd. Respondent No.4 is the Board for Industrial and Financial Reconstruction (BIFR). Respondent No.5 is M/s.Neptune Enterprise.

2. The reliefs claimed are unusual. It is necessary therefore to state not merely the circumstances but also the manner in and the purpose for which they have been claimed. The Petitioner has sought a declaration that a Memorandum Of Intent (MOI) dated 18th October, 2000 and a Memorandum of Understanding (MOU) dated 31st March, 2001 entered into between Respondent No.1 on the one hand and IDBI and IFCI i.e. Respondent nos.2 and 3 on the other are null and void. The Petitioner has also sought a direction that IDBI and IFCI Ltd. be restored to the securities provided by Respondent No.1 for the loans obtained by M/s.Powmex Steel Ltd. (now amalgamated with Respondent No.1) and Respondent No.1.

3. By the aforesaid MOI and MOU, the property which is the subject matter of this petition was sold by Respondent No.1 to IDBI and IFCI. IDBI and IFCI in turn sold the same to M/s.Neptune Enterprise – Respondent No.5 by a registered conveyance dated 29.6.2005 after inviting tenders for the sale thereof. M/s.Neptune Enterprise in turn have created an English mortgage of the said property by way of a first charge in favour of the Housing and Urban Development Corporation (HUDCO), as security for repayment of

their dues to HUDCO.

4. Mr.Bhatt, the learned counsel appearing for the Petitioners clarified at the hearing that the Petitioners do not desire to set aside either of the aforesaid sales i.e. the sale by Respondent No.1 to IDBI and IFCI Ltd and the sale by IDBI and IFCI Ltd to M/s.Neptune Enterprise. He stated that the Petitioners confined the reliefs to claim a sum of Rs.11,46,21,000/- to be paid by IDBI and IFCI being the difference in the price of Rs.89,76,00,000/- paid by them to Respondent No.1 as consideration for the said property and the price of Rs.101,22,21,000/- received by them from M/s.Neptune Enterprise for the sale of the said property. Indeed in paragraph 2.6 of the Petition, it is averred as under :-

> "The Petitioner does not propose at this stage to challenge the sale of concerned property by Respondent Nos.2 and 3 to Respondent No.5 after making a public offer. Petitioner submits that the said sale by Respondent Nos.2 and 3 to Respondent No.5 needs to be treated as having been done by Respondent Nos.2 and 3 on behalf of Respondent No.1 company."

5. We proceed to state the relevant facts.

(a). Respondent No.1 owned inter-alia the said property being a plot of land at Bhandup, Mumbai, admeasuring 89,940.40 sq. mtrs

with various structures thereon. One M/s.Powmex Steel Ltd was sanctioned and granted various financial facilities by IDBI and IFCI. M/s.Powmex Steel Ltd was merged and amalgamated with Respondent No.1, who had taken over all its assets and liabilities including those of IDBI and IFCI Ltd.

(b). IDBI and IFCI Ltd opted to recover their dues by entering into a One Time Settlement (OTS) in full and final settlement of their dues from Respondent No.1. The OTS involved the purchase by IDBI and IFCI Ltd of the said property from Respondent No.1.

(c). Pursuant thereto the said MOU dated 18th October, 2000 was entered into between Respondent No.1 on the one hand and IDBI and IFCI Ltd. on the other. Prior to entering into the said transaction, IDBI and IFCI Ltd had given a public notice through their advocates inviting claims, if any, from the public at large. IDBI and IFCI Ltd also conducted a due diligence. Not finding any defect in title, nor any legal impediment by way of a Court order or otherwise they proceeded to complete the transaction. The property was purchased for a sum of Rs.89,76,00,000/-. The Appropriate Authority under the Income Tax Act granted a no objection certificate dated 21st

December, 2000 in respect of the said sale. Thereafter a deed of conveyance dated 31st March, 2001 was executed between the parties in respect of the said property except the SVL part. The same was registered with the Sub-Registrar of Mumbai on 12th April, 2001. An MOU also dated 31.3.2000 was executed in respect of the SVL properties. The same was also registered on 12.4.2001.

It appears that Respondent No.1 owed IDBI Rs. 51.40 crores and IFCI Ltd Rs. 27.70 crore. IDBI and IFCI Ltd agreed to settle their dues as per the OTS for Rs. 44.37 and Rs. 23.39 crores respectively i.e for an aggregate amount of Rs. 67.76 crores. Respondent No.1 agreed to sell the said property to IDBI and IFCI Ltd for an aggregate amount of Rs.87.76 crores. Thus after adjusting the agreed sum of Rs. 67.76 crores, IDBI and IFCI owed Respondent No.1 Rs. 20.00 crores. It is an admitted position that the balance sum of Rs. 20.00 crores has already been paid. Admittedly, therefore, the property stood transferred and assigned to and vested in favour of IDBI and IFCI. It is important to note that the validity of this transaction has not been challenged except as stated hereafter.

6 (a). IDBI and IFCI had public notices issued in the 12th March,

2003 edition of the Times of India and other newspapers inviting sealed tenders for the sale of the said property. They did so after complying with the Central Vigilance Commissioner's guidelines.

(b). On 5th July, 2004, M/s.Neptune Enterprises (Respondent No.5) was declared to be the highest bidder. By a letter dated 3rd March, 2005, the offer of M/s.Neptune Enterprises was accepted for a consideration of Rs.101,22,21,000/-. An MOU dated 22nd March, 2005 was entered into for the sale of the said property to M/s.Neptune Enterprises. On execution of the MOU M/s.Neptune Enterprises paid Rs.101,22,21,000/-. Finally, by a deed of conveyance dated 29th June, 2005, IDBI and IFCI sold, conveyed and transferred the property to M/s.Neptune Enterprises. Thereupon M/s.Neptune Enterprises paid the balance purchase price of Rs.91,09,98,900/- Thus, M/s.Neptune Enterprises has paid the entire consideration in respect of the said property.

(c). By a deed of English Mortgage dated 29th June, 2005, M/s.Neptune Enterprises has created a first charge and mortgage on the said property in favour of the Housing and Urban Development Corporation Ltd (HUDCO) as security for the due repayment of the financial facilities extended/agreed to be extended by HUDCO.

7. It is thus apparent that the said property has been sold by Respondent No.1 to IDBI and IFCI, Respondent nos.2 and 3 under and by virtue of the deed of conveyance dated 31st March, 2001 and the MOU dated 31st March, 2001. Thus, as on 31st March, 2001, the transfer and assignment in respect of the said property by Respondent No.1 in favour of IDBI and IFCI was complete. Thereafter inter-alia by virtue of the deed of conveyance dated 29th June, 2005, the property stood transferred in favour of M/s.Neptune Enterprises. Further, by virtue of the deed of English mortgage dated 29th June, 2005, it is mortgaged in favour of HUDCO by M/s.Neptune Enterprises.

8. In fairness to the Petitioner, it must be reiterated that they did not seek to set-aside the sale of the property in favour of M/s.Neptune Enterprises. As stated above, it was averred in the

Petition and submitted by Mr.Bhatt on behalf of the Petitioner that the Petitioner only seeks a declaration that the sale to and in favour of M/s.Neptune Enterprises i.e. Respondent No.5 be deemed to be by the Petitioner and not by IDBI and IFCI. It is for this limited purpose, that the Petitioner seeks a declaration that the sale by Respondent No.1 in favour of IDBI and IFCI is null and void. Thus by this process, the Petitioner seeks to recover an amount of Rs.11,46,21,000/- being the difference in consideration between the two transactions. The justification for this approach Mr.Bhatt submitted was that the consideration paid by IDBI and IFCI was not utilised for the benefit of the employees of Respondent no.1. He submitted that Respondent No.1 had failed and neglected to pay the wages of its employees for several months.

9. We have no doubt that the conduct of Respondent No.1 in failing to pay the wages of its employees has affected them adversely. We say nothing about the conduct of Respondent No.1 and the liabilities of Respondent No.1 qua its employees. It is indeed unfortunate that Respondent No.1 has failed and neglected to do so.

10. The question however is whether in the facts and

circumstances of the case, it is permissible to foist the liability of Respondent No.1 upon IDBI and IFCI, in any manner whatsoever. We think not. The contention is liable to be rejected for more than one reason. There is no principle of law or equity especially in exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution of India, that would entitle or justify us in calling upon them to pay the difference in price.

11. IDBI and IFCI were not responsible in any manner for the failure of Respondent no.1 in paying the wages of its employees. There is nothing to suggest that the purchase by them of the said property was not at the then prevailing market price. Indeed, they sold the property after more than five years at an appreciation of merely about 12 per cent i.e. less than 2.5 per cent per annum. Nor is there anything to suggest that the sale by them to M/s.Neptune Enterprises was at less than the market value.

12. It is important to note that it is clearly established that the Petitioners were at all times aware of all that had transpired in the matter. This is clear inter-alia from the following facts :-

(a). The Petitioners had filed Complaint (ULP) No.78 of 2003 on

27th January, 2003 under Section 28 of the MRTU & PULP Act. The complaint was verified by one Pius Verghese, President of the Union, who has verified the present Petition. In paragraph 3.5 of the Complaint, he had stated as under :-

> "In fact the company have sold surplus land at Bhandup, Mumbai towards adjustment of long term dues of IDBI, IFCI, ICICI and ICICI Bank and have also earned profits from the said sale of surplus land at Bhandup, Mumbai. The company had thus shown profits of Rs. 939 lacs for the year 2000-2001 and Rs. 754 lacs for 2001-2002. This profit was only on account of the sale of land at Bhandup. In fact in terms of undertaking given to the Honourable Division Bench the company was required to utilize this amount for payment of arrears of wages of the workman concerned with this complaint. The company has deliberately failed and neglected to do so".

(b). One Rajendra K.Bhatt has also filed an affidavit in the said complaint in which he in turn referred to the aforesaid transaction. In the affidavit in reply, the Respondents had expressly referred to the aforesaid transactions being on a swap basis. The transactions were themselves referred to in clear term. By an order dated 31st January, 2004, the Industrial Court in paragraph 46 recorded as under :-

> "So far as the disposal of the land is concerned the admitted position is that the 30 acres of land has been sold on swap basis as it was exchanged in lieu of loans incurred from the other financial institutions".

(c). The Petitioner and the Company filed Writ Petition Nos.749 of 2004 and 1504 of 2004 respectively challenging the aforesaid order of the Industrial Court. The aforesaid transactions have been expressly referred to in the order of the learned single Judge dated 25th June, 2004.

13. Thus, the Petitioners' contention throughout correctly was that Respondent no.1 had wrongly failed to abide by its obligation. For five years, no steps were taken qua their transactions. It would be grossly inequitable and unfair to IDBI and IFCI to now affect the transactions validly entered into by them five years ago. Further, even a suit for the said reliefs would be barred by limitation. Thus, there is no ground in law or equity, entitling the Petitioners to the reliefs sought by them.

14. Mr. Bhatt submitted that the sale so far as IDBI was concerned is illegal. He submitted that IDBI is not entitled to acquire immovable property. The argument is unsustainable. Section 3(2) of

the Industrial Development Bank of India Act, 1964 itself contemplates IDBI being entitled to acquire, hold and dispose of properties. Section 3(2) reads thus :-

> "The Development Bank shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by that name, sue or be sued".

15. In the circumstances, the Petition is dismissed. The Petitioner shall pay costs of Rs.2500/- to each of Respondent Nos.2, 3 and 5 within twelve weeks from today.

CHIEF JUSTICE

S.J. VAZIFDAR, J.